IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

Crl.MC.No. 3526 of 2007()

[CRIME NO.500/92 OF KARUNAGAPPALLY POLICE STATION]

PETITIONER:

NISAR, S/O.SUBAIRKUTTY,
AIKKARA KIZHAKKATHIL KADATHUR MURI,
KULASEKHARAPURAM VILLAGE, KARUNAGAPPALLY
KOLLAM DISTRICT.

BY ADV. SRI.R.SURAJ KUMAR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
KARUNAGAPPALLY POLICE STATION.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3526 of 2007

Dated this the 23rd day of November 2007

O R D E R

The petitioner is the fourth accused and he faces indictment in a prosecution under Section 436 I.P.C. The petitioner was shown as an absconding accused in the charge sheet. He was never arrested. Warrant of arrest has been issued against the petitioner by the learned Magistrate now in the committal proceedings. Co-accused (accused 1 to 3) have already been tried, found not guilty and acquitted by the learned Assistant Sessions Judge.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. He was never shown as an accused and has no information or knowledge about the pendency of the proceedings against him. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to

release the petitioner on bail when he appears and applies for bail.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007